WASHINGTON, D.C. - U.S. Rep. Charlie Melancon voted today in support of a bipartisan anti-price gouging bill to protect consumers against unfair gas prices. The Energy Price Gouging Prevention Act, H.R. 1252, would investigate and punish those who artificially inflate the price of gasoline. The bill sets criminal penalties for price gouging, and permits states to bring lawsuits against wholesalers or retailers who engage in such practices. May 23, 2007

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"Louisianians are already paying far too much at the pump and are begging for relief," said Rep. Melancon.
"As we approach the summer driving season, this bill will work to reign in gas prices and punish dishonest retailers, while protecting fair gas station owners who are simply trying to stay in business. I will continue working in Congress for policies that fairly balance the needs of consumers with those of business owners."

The Energy Price Gouging Prevention Act would provide relief to consumers by giving the Federal Trade Commission the authority to investigate and punish companies that artificially inflate the price of energy. Twenty-eight states have anti-price gouging laws. Under the bill, the Justice Department could impose criminal penalties of up to $150 million on corporations, and fines of up to $2 million and jail sentences of up to 10 years for individuals. This would apply during a national emergency and would crack down on companies charging unconscionable and excessive prices. In addition, the bill would provide the FTC with the authority to bring greater transparency to oil and gas markets, and direct penalties from price gougers to the Low-Income Home Energy Assistance Program (LIHEAP).

Families are paying an all-time record high of $3.22 a gallon on average for regular gasoline, up 89 cents from the beginning of the year. [EIA, 5/21/07] The jump in U.S. gasoline prices this year has so far drained consumers of an extra $20 billion, or about $146 for each passenger car in the country. [Government Accountability Office testimony, 5/22/07] Last year, families paid $1,000 more on average for gasoline than in 2001, and each additional 10 cents per gallon of gasoline adds $14 billion to America's annual gasoline bill. [USA Today, 5/17/07; GAO, 2006]

Rep. Melancon, who serves as vice chair of the Energy and Commerce Oversight and Investigations Subcommittee where the bill originated, worked to address concerns from retail gas marketers that the original language was too broad in its definition of price-gouging, and could punish retailers for conditions out of their control.

At Rep. Melancon's urging, Energy and Commerce Oversight and Investigations Subcommittee Chairman Bart Stupak, D-Mich., added a trigger to his bill allowing the FTC to go after price gougers only during presidentially-declared "energy emergencies." Without the energy emergency trigger language, many retail marketers would be paralyzed by fear of arbitrary investigation by the FTC. Smaller "mom and pop" stores would be especially affected and many may discontinue gasoline sales, or close completely, out of fear of incurring serious fines and/or jail time that would put them out of business. With the trigger language included, the bills gives a much clearer definition of circumstances in which price gouging statutes will be invoked.

Furthermore, the original language prohibited selling gasoline at prices that are "unconscionably excessive" or take "unfair advantage" of consumers, leaving further clarification to the FTC and courts to determine. Many factors outside of the individual retailer's control set the price of retail gasoline. Rep. Melancon successfully lobbied Chairman Stupak to add language allowing several of these factors to be taken into consideration when determining whether price gouging occurred, including:

1. **Any additional costs or risks incurred by the seller.** Gasoline prices are highly volatile and often, in a period of rapidly escalating prices, a marketer is compelled to price gas based on the future cost of replacement, or they will not be able to replace their current inventory. Under the original version of this bill, this practice would be defined as price gouging.

1. **Local, regional, national or international market conditions.** Without the inclusion of these factors, courts would not be required to take into account broader market conditions when determining the definition of "unconscionably excessive" and "unfair advantage." For example, a pipeline explosion in a major oil-producing country would cause a supply disruption that would lead to higher prices at the pump. Under the original language, that would not necessarily be taken into account and wholesale/retail marketers could be punished for price gouging due to factors out of their control. The new language requires international market conditions, such as a supply disruption, to be taken into account.

"While I am as concerned as the next driver about skyrocketing gas prices, often retailers are not who we should point the finger at, since they frequently are at the mercy of market conditions outside of their control," said Rep. Melancon. **"I appreciate that Chairman Stupak allowed my office to be involved in making this bill a better piece of legislation, and I thank him for including in the final bill these provisions protecting honest retailers from unfair prosecution. I look forward to continuing our productive partnership on the Oversight and Investigations Subcommittee in the future."**

A summary of H.R. 1252 is below, with the Melancon-requested provisions in bold.

SUMMARY OF H.R. 1252 (NEW TEXT)

"FEDERAL PRICE GOUGING PROTECTION ACT"

Section 1:

Title of the bill.

Section 2:

Prohibits the wholesale or retail sale of gasoline or other petroleum distillates at prices that are *unconscionably excessive* or take *unfair advantage* of consumers. Applies **during an "Energy Emergency" declared by the President for geographic areas in the United States for renewable 30-day periods.**
Factors to be considered in determining whether a violation has occurred include comparing the price charged by a seller during the Energy Emergency to both the average price charged by that seller during the 30-day period prior to the Emergency and the price charged by competing sellers in the same area and during the same period
. Further factors include considering any additional costs or risks incurred by the seller; local, regional, national or international market conditions;
and whether the seller increased the quantities of gasoline or other petroleum distillates

available during the Energy Emergency

.

Also prohibits the reporting of false pricing information to Federal agencies.

Section 3:

Provides for civil penalties. The Federal Trade Commission (FTC) may enforce the bill as an unfair or deceptive trade practice under the FTC Act and seek civil penalties of up to three times the amount of profits or $3 million for charging unconscionable prices, and up to $1 million for providing false information. The FTC is required to give priority to actions against firms with annual sales of gasoline or other petroleum distillates of $500 million or more.

Section 4:

In addition to any penalty applicable under section 3, any person who violates section 2-(1) if a corporation, shall be fined under title 18, United States Code, not to exceed $150,000,000; and (2) if an individual, shall be fined under title 18, United States Code, not to exceed $2,000,000, or imprisoned for not more than 10 years, or both.

Section 5:

Permits State Attorneys General to enforce the bill against *retail* sellers by bringing an action in U.S. district courts after first providing notice to the FTC.

Section 6:

Provides that any civil fines or penalties collected shall be applied to the Low Income Home Energy Assistance program administered by Department of Health and Human Services.

Section 7:

Provides that nothing in the bill preempts other authority of the FTC or the States to take action against the pricing prohibited by this bill.

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